

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

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| <b>TRANSLink Transmission Company, L.L.C.</b>   | <b>)</b> | <b>ER01-3154-000</b> |
| <b>Alliant Energy Corporate Services, Inc.,</b> | <b>)</b> | <b>EC01-156-000</b>  |
| <b>MidAmerican Energy Company,</b>              | <b>)</b> |                      |
| <b>Xcel Energy Services, Inc. and</b>           | <b>)</b> |                      |

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**COMMENTS OF THE  
ILLINOIS COMMERCE COMMISSION**

Pursuant to Rule 211 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. 385.211, the Illinois Commerce Commission (“ICC”) hereby submits its comments in the above-captioned proceedings in response to a filing submitted jointly by Alliant Energy Corporate Services, Inc., MidAmerican Energy Company, Xcel Energy Services, Inc. and TRANSLink Transmission Company, L.L.C. (“Applicants”).

**I. Introduction and Background**

On September 28, 2001, Applicants submitted both a FPA Section 203 application and FPA Section 205 rate schedules for Commission authorization to form and participate in TRANSLink, an independent transmission company (“ITC”).<sup>1</sup> The applications and filings submitted by the Applicants do not seek approval of the TRANSLink as an RTO.<sup>2</sup> Instead, Applicants state that it is their intent to model TRANSLink as a for-profit ITC operating under a hybrid relationship with the Midwest ISO (“MISO”) through Appendix I of the MISO

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<sup>1</sup> Applicants do not provide a definition of an ITC in the TRANSLink filing. However, the “ITC” as described in the TRANSLink filing is not a company that owns all of its transmission facilities and focuses purely on the business of operating the transmission facilities that it owns.

<sup>2</sup> Transmittal Letter at 11.

Agreement, similar to the parties in *Commonwealth Edison Company et al.*<sup>3</sup> Applicants state that they seek to extend the principles consistent with the declaratory order issued in *Commonwealth Edison* as a mechanism of compliance with the Commission's Order 2000 requirements.<sup>4</sup> Further, it is the intent of the Applicants that TRANSLink will eventually operate under multiple RTOs in both the Eastern and Western interconnections.<sup>5</sup> Applicants also request that the Commission provide an order by December 31, 2001.<sup>6</sup>

The Commission deemed the Hybrid structure acceptable in Order 2000 stating that the Commission was "prepared to accept a transco, ISO, hybrid form or other form as long as the RTO meets the minimum characteristics and functions and other requirements. We require only that the RTO be responsible for ensuring that the requirements are met in a way that satisfies our rule."<sup>7</sup> The Commission also stated in *Commonwealth Edison* that an arrangement between an ISO and an ITC would still need to satisfy the Commission's minimum RTO requirements and that the ITC would be required to demonstrate that both its own governance and structure is independent from any market participant and that the ITC is of sufficient size.<sup>8</sup>

## **II. Recommendation**

The Applicants state that they seek to establish the TRANSLink by extending the principles previously approved by the Commission in *Commonwealth Edison*. However, as the ICC will argue *infra*, the TRANSLink filing fails to do so in several key areas.

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<sup>3</sup> *Id.* at 3; see also, *Commonwealth Edison Company, et al.* 90 FERC ¶61,192 (2000).

<sup>4</sup> *Id.* at 2

<sup>5</sup> *Id.* at 2

<sup>6</sup> Notice of Filing at 2.

<sup>7</sup> Order 2000 at 31,036.

<sup>8</sup> *Commonwealth Edison* at 61,627

At a minimum TRANSLink does not meet the independence requirement outlined in Order 2000. As filed, the TRANSLink appears to have the effect of maintaining the status quo by allowing the participants to retain control of their transmission systems and thwart the Commission's efforts to develop a seamless competitive electricity market in the Midwest.

Accordingly, the ICC respectfully requests that the Commission find that:

- 1) The TRANSLink proposal fails to meet the independence standards established in Order 2000;
- 2) The proposed delegation of RTO functions to TRANSLink will hinder the development of an efficient regional electricity market;
- 3) The requested base equity returns and bonus premiums are both unjust and unreasonable;
- 4) The TRANSLink is an unnecessary alternative to the MISO;
- 5) The TRANSLink proposal is not the result of a collaborative process; and
- 6) Certain aspects of the TRANSLink Rate Design have merit and warrant the Commission's consideration as a model for other RTOs.

The ICC urges the Commission to reject the TRANSLink proposal and in furtherance of the Commission's goal of developing large RTOs across the United States, direct the Applicants to participate directly in either the MISO or the Alliance RTO. If the Commission does not adopt the ICC's primary recommendation, then as an alternative, the ICC urges the Commission to hold its decision in this proceeding in abeyance until after the Commission has considered the broader Midwest RTO development issues in its Notice of Proposed Rulemaking in Docket No. RM01-12-000 ("RTO NOPR").

## **II. Discussion**

### **a. The TRANSLink proposal fails to meet the independence standards established in Order 2000.**

Applicants state that TRANSLink will be formed as a limited liability company with one separate entity acting as a managing member ("Corporate Manager") and one or more non-managing members. The Corporate Manager is to be governed by an independent board of

directors that are appointed by its shareholders and are not to be affiliated with any market participant. With the exception of a limited number of material transactions, the Corporate Manager will have the exclusive authority to manage TRANSLink and to direct its business and affairs.<sup>9</sup>

As stated in Order 2000, any RTO must demonstrate that all users of the grid will be treated on an equal basis in the provision of non-discriminatory transmission service. For example, the TRANSLink proposal contains no divestiture/spin-off provision. In addition, no option for Applicants to divest their assets for cash exists.<sup>10</sup> Instead, Alliant is expected to transfer its assets to the TRANSLink in exchange for an equity ownership interest in TRANSLink.<sup>11</sup> The lack of a “divest-for-cash” option creates several problems. First, it prevents TRANSLink from becoming an ITC. As proposed the TRANSLink will be nothing more than a for-profit ISO operating within the non-profit MISO. Second, when a company that has divested for a large percentage of the TRANSLink stock continues to hold that stock, the incentive to try and manipulate or influence the TRANSLink Board of Directors will always exist. The clean break that a divestiture for cash would afford will ensure that the participant has no interest in the Board of Directors or the operations of TRANSLink.

As a result, the ICC urges the Commission to require a divestiture-for-cash requirement to trigger the formation of the TRANSLink. If the TRANSLink proposal is unable to attract sufficient capital from interested investors to comply with such a condition, then at a minimum, the company transferring their assets to trigger the formation of TRANSLink should be required to spin-off the TRANSLink stock for cash.

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<sup>9</sup> Joint Application Pursuant to Section 203 of the FPA for Authorization to Transfer and Consolidate Control over Transmission Facilities, Volume 2 at 14.

<sup>10</sup> Exhibit AAZ-100 page 15, at 10

<sup>11</sup> Exhibit JDW-100 page 33, at 12

The TRANSLink’s proposal for selecting a Board of Directors (“BOD”) is ripe for abuse by transmission owners. The TRANSLink proposes to allow the transmission owners the right to approve a slate of candidates assembled by a committee consisting of members of both the MISO’s Advisory Committee and the affected State Commissions.<sup>12</sup> At a minimum, an independent search firm should select the BOD. Anything less will result in TRANSLink having an incentive to perform the very actions that the Commission is trying to prevent. As written, the TRANSLink’s proposal is unlikely to provide for a truly independent BOD and will result in compromising of the Commission’s tenet that “an RTO needs to be independent in both reality and perception.”<sup>13</sup> If the Commission determines that a spin-off/divestiture trigger is appropriate, then the shareholders should select the BOD.

The TRANSLink proposal also allows each Applicant to appoint non-voting observers to the Corporate Manager’s Board of Directors. The purpose of the observers is to allow the Applicants to listen to the Board of Directors’ discussions and provide information to the Board from the Applicants’ perspective on specific matters of interest. Applicants contend, “The observers will have no ability to control the decisions of the Board or to participate in any of the votes, and as a result, will not compromise the independence of the Corporate Manager.”<sup>14</sup>

Even though observers are not allowed to vote, allowing the observers to “provide information to the Board on behalf of the Applicants” would provide the Applicants with special access to the Board of Directors not enjoyed equally by all market participants and the

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<sup>12</sup> Exhibit AAZ-100 page 17, at 10

<sup>13</sup> Order 2000 at 31, 061

<sup>14</sup> Joint Application Pursuant to Section 203 of the FPA for Authorization to Transfer and Consolidate Control over Transmission Facilities, Volume 2 at 16 (footnote 26).

opportunity to influence the Board of Directors in a fashion similar to that of an inside lobbyist. A provision that provides access to the BOD by a select group both compromises the Commission's "reality and perception" standard and will result in the Commission "chasing after conduct", a behavior that the Commission has expressed a desire to avoid altogether.<sup>15</sup>

The independence of TRANSLink is especially important given that the TRANSLink proposal intends for TRANSLink to provide the total transfer capability ("TTC") of the transmission facilities that it operates to the MISO for determination of the regional available transmission capacity ("ATC").<sup>16</sup> Accurate calculation and posting of TTC and ATC is one of the most controversial aspects of OASIS. While the hybrid concept falls within the parameters of Order 2000,<sup>17</sup> it is important that a truly independent and disinterested body provide the data that the MISO will use to calculate and maintain accurate and reliable TTC and ATC values.

As filed, the TRANSLink proposal appears to be nothing more than a mechanism to allow the transmission owners to keep control of their transmission systems and continue to set transmission policies regarding the TRANSLink system. Such provisions have no place in the RTO context and if left unchecked, would do little to instill confidence in market participants regarding the ability of TRANSLink to provide transmission service and grid operation in a nondiscriminatory fashion.

As stated in the RTO Final Rule, the disclosure safeguard requires that any RTO must demonstrate in its filing that its proposed arrangements will ensure that it can treat all users of the grid on an equal basis in providing transmission service. The TRANSLink Applicants have failed to provide convincing evidence that the TRANSLink will be able to do so. As a result, the

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<sup>15</sup> Order 2000 at 31,069

<sup>16</sup> Transmittal Letter at 20

<sup>17</sup> Order 2000 31,144

ICC urges the Commission to find the TRANSLink filing regarding the independence of the TRANSLink inadequate.

**b. The delegation of RTO functions to TRANSLink will hinder the development of an efficient regional electricity market.**

Under the conditions of its arrangement with the MISO, TRANSLink intends to perform all functions of an RTO with the exception of security coordination, long-term planning, market-monitoring and dispute resolution services, which it will contract to receive from the MISO.<sup>18</sup> The ICC's concerns regarding such substantial delegation of MISO responsibilities are similar to those identified by National Grid USA in a recently issued white paper.<sup>19</sup> In the white paper, National Grid concludes that a for-profit transco can, indeed, be a viable business that will induce investors to put capital into the transmission system without having to perform all of the Order 2000 RTO functions. However, National Grid also concludes that a RTO model that provides for so-called "independent transmission companies" operating within an ISO is not a model well-designed for "attracting new investment to the region."<sup>20</sup> The reason for this is simple. In order to have a chance of being a viable transmission business, an independent transmission company must be delegated substantial and significant functions from the ISO. However, broad regional power markets will be fractured if those functions are delegated to sub-regional entities such as "independent transmission companies." Accordingly, the circle is closed and the "independent transmission company" within an ISO model for fulfilling the Order 2000 RTO functions fails. Hence, to protect the public interest, regulators should not permit the delegation.

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<sup>18</sup> Transmittal Letter at 3.

<sup>19</sup> See, *Response of National Grid USA to Questions Posed by the Commission*, Docket No. EX02-3-000, November 2, 2001.

<sup>20</sup> *Id.*, at 13

In addition, the success of the TRANSLink proposal hinges on the coordination agreement between TRANSLink and the MISO. The withdrawal of Commonwealth Edison, Illinois Power and Ameren from the MISO was predicated on the implementation of an Inter-Regional Coordination Agreement (“IRCA”). The objective of the IRCA is to provide seamless operation of the transmission system across the entire geography of both the MISO and the Alliance RTO. However, as the Commission is aware, there is concern that the IRCA is not being implemented as planned and the realization of a seamless Midwest electricity market is in jeopardy. Given its experience gained from observation of the disappointing inter-regional cooperation process between the MISO and the Alliance RTO, the ICC has little reason to be optimistic that the cooperation necessary in a hybrid relationship between the TRANSLink and the MISO will be successful. In addition, given the broad operational authority and functional control over transmission facilities as proposed by TRANSLink, a similar development between TRANSLink and the MISO will result in the creation of an intra-MISO seam that will foster the continued bifurcation of the Midwest market.

The hybrid arrangement proposed by TRANSLink provides no assurance that operational decisions will be made on a regional basis as favored by the Commission. Instead, TRANSLink provides its participants with a mechanism to allow many of the transmission functions and policies to continue being set by the transmission owners. With such broad control over its transmission systems and limited oversight by the MISO, it is highly improbable that the TRANSLink will be able to achieve the efficiencies that could be achieved with the same systems under the MISO. In addition, TRANSLink’s goal of operating multiple systems under multiple RTOs across the Eastern and Western interconnections has the potential to create arrangements that develop incompatible structures and systems and fail to encompass wholesale



market trading patterns. Commission approval of the TRANSLink will result in perpetuating the status quo in the provision of transmission service on the systems of the TRANSLink participants. As a result, the ICC strongly urges the Commission to act consistent with its previous decisions regarding hybrid RTO arrangements and reject the TRANSLink proposal.

**c. TRANSLink’s requested return on equity is both unjustified and unreasonable.**

TRANSLink proposes to use “the most recently authorized ROE of the relevant state commission for retail rates” as a baseline and then add basis points depending on the participant’s level of asset contribution. Transmission owners that transfer ownership of their facilities to TRANSLink will receive a premium of 100 basis points. Transmission owners, public power and cooperative participants that enter into lease agreements will receive a premium of 50 basis points. In addition, all participants are eligible to receive a premium of 200 basis points over the rate currently allowed by the relevant state commission for any investments in new transmission facilities.<sup>21</sup>

As a result, TRANSLink participants will be able to receive returns in the range of 12 to 15 percent depending on the level of contribution that the transmission owners choose. As noted *supra*, Alliant is expected to contribute its assets to the TRANSLink in exchange for shares of stock and the remaining utilities will participate through lease and operation agreements. If approved, the TRANSLink proposal will allow Alliant to receive a return of almost 12.5 percent. MidAmerican and Excel will receive equity returns of 13.76 and 12.09 percent respectively.<sup>22</sup> The remaining public power and cooperative participants, who are not regulated at the state level, are seeking equity returns of 12.7 percent.

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<sup>21</sup> Transmittal Letter at 28

<sup>22</sup> Exhibit AAZ-104

The ICC also finds the use of the “most recent authorized ROE of the relevant state commission” as a baseline for determining an Applicant’s equity return suspect. The state authorized ROE is based on bundled rates that reflect the risk of providing the entire spectrum of electric service, not just transmission. The inclusion of risk for providing generation and distribution service should not be a factor in determining the return for transmission service. If left as filed, the TRANSLink proposal will result in inflated risk premiums and the allowance of the collection of risk premiums where they are not warranted. Furthermore, the TRANSLink approach of using an existing state ROE allows the Applicants to avoid filing a comprehensive rate case. Given the magnitude of both the requested risk premiums and the impact that TRANSLink’s rates will have on transmission customers, the ICC urges the Commission to conduct a comprehensive rate case instead of relying on outdated State ROE returns.

Commission approval of TRANSLink’s proposed equity returns will have a detrimental effect on MISO membership. Currently the MISO is authorized to receive a return on equity of 10.5 percent.<sup>23</sup> Given the potential to receive an equity return two to five points higher than the MISO’s allowed equity return for a commitment term that is less than both that of the MISO or *Commonwealth Edison*, there is no reason for any transmission owner to join, or stay with, the MISO.

In fact, such a migration is already occurring given the fact that both Alliant and Northern States Power are both members of the MISO and TRANSLink Applicants. Commission approval of the TRANSLink’s equity return proposal could ultimately be the death knell of the MISO.

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<sup>23</sup> *Midwest Independent Transmission System Operator, Inc.* 97 FERC ¶ 61,033

The inclusion of both Northern States Power and Alliant as Applicants raises concerns regarding the transfer of the facilities of both Northern States Power and Alliant to TRANSLink. Both are currently members of the MISO and are obligated to the remainder of their MISO terms. How can the parties be members of both organizations? This question is especially relevant given that the commitment of Alliant's facilities is necessary to trigger the formation of TRANSLink. At a minimum, the changing of both Northern States Power and Alliant's MISO membership status should be subject to the same amount of scrutiny that was afforded Commonwealth Edison, Illinois Power and Ameren when they withdrew from the MISO to join the Alliance RTO.

**d. The TRANSLink is an unnecessary alternative to the MISO**

The Applicants state that additional participation in TRANSLink will “function as a bridge between the MISO and other RTOs to the south and the west.”<sup>24</sup> The ICC acknowledges the importance of providing existing RTOs with a mechanism for expansion. However, the TRANSLink is not necessary for the MISO to increase its geographic footprint. For example on October 19, 2001 the MISO and the Southwest Power Pool (“SPP”) reached an agreement that would result in the consolidation of the two organizations.<sup>25</sup> Clearly, the MISO is able to bridge the gap between itself and the other RTOs to the south and west without the assistance of the TRANSLink.

The Applicants also state that one purpose of creating the TRANSLink is to allow participants to operate under a for-profit structure.<sup>26</sup> However, such a desire can be accommodated in a more efficient manner than through an ITC operating under the MISO. For

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<sup>24</sup> Transmittal Letter at 4

<sup>25</sup> MISO Press Release, October 19, 2001

<sup>26</sup> Transmittal Letter at 9

example, the ARTO has adopted a for-profit business model and the MISO has stated a willingness to consider options to alter its current non-stock, not-for-profit organizational structure if circumstances warrant movement in a different direction from the current structure and implement innovative ratemaking and performance-based rates.<sup>27</sup> If the Applicants truly want to operate under a for-profit structure, it is not necessary to pay the TRANSLink transmission owners inflated equity returns, create additional administrative obligations and risk another seam in the Midwest market to allow the Applicants to operate under a for-profit structure.

**e. The TRANSLink Proposal is not the result of a Collaborative Process**

Applicants state that work began on the TRANSLink proposal “shortly after the Commission issued its declaratory order on February, 24, 2000”.<sup>28</sup> Unfortunately, with little collaboration on the parts of the Applicants with affected State Commissions, the TRANSLink filing ignores the Commission’s Order 2000 endorsement of the collaborative process. In Order 2000, the Commission stated that the collaboration of transmission owners, market participants, interest groups and governmental agencies attempting to reach mutual agreement on how best to establish RTOs in their respective regions is a key element of voluntary formation of RTOs.<sup>29</sup>

With the exception of their “RTO statement of intent” filed in January 2001, comments regarding the MISO/Alliance RTO Super-regional Rate Settlement and a meeting on October 3, 2001 to inform the ICC that the TRANSLink proposal was about to be filed, there has been no

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<sup>27</sup> See, MISO’s Order 2000 compliance filing at 4, Docket No. RT01-87 (January, 2001)

<sup>28</sup> Exhibit AAZ-100 page 14, at 10

<sup>29</sup> Order 2000 at 31,221

interaction with the ICC regarding the design of the critical elements of the TRANSLink. Given that the TRANSLink filing is a massive nine volumes involving nearly every aspect of operations executed by an RTO on multiple systems in multiple states, one would hope that the TRANSLink Applicants would have sought the cooperation and input of the affected parties. Such an approach could have produced a proposal that contained superior products and innovative ideas designed to meet the needs of all parties.

The Commission can address this shortcoming by holding its decision regarding the TRANSLink filing in abeyance pending resolution in the RTO NOPR and requiring participation in collaborative meetings by both TRANSLink and the affected parties, as required.

**f. Certain aspects of the TRANSLink Rate Design have merit and warrant the Commission's consideration as a model for other RTOs.**

While the ICC strongly believes that Commission approval of the TRANSLink proposal will ultimately have a negative impact on the development of competitive electricity markets in the Midwest, TRANSLink's proposed rate design is innovative and warrants the Commission's consideration as a model for rate design in other RTOs. The TRANSLink proposal divides the annual transmission revenue requirement into three distinct components: Supply, Highway and Load. While the cost allocation associated with each component as proposed is somewhat suspect and the Applicants have a strong incentive to skew the allocations to their benefit, such an approach could provide for a more accurate and appropriate alignment of cost causation and cost allocation. As a result, the TRANSLink proposal, while not eliminating cost shifting, will help to mitigate the cost shifting between customers and cross-subsidization between TRANSLink zones while reducing uncertainty about transmission expansion.

Another positive feature of the TRANSLink rate design is the distribution of revenues to the zone and facility the investment was made in. Such a provision enhances the incentives to

invest in transmission by reducing cost recovery uncertainty. It will also improve the process of interconnection by removing the uncertainty of cost recovery of transmission network upgrades.

The TRANSLink rate design also provides an incentive to allow other transmission owners to join the TRANSLink. Because the TRANSLink rate design reduces cost shifting between high-cost and low-cost transmission owners, there is less incentive for low-cost transmission owners to oppose a high-cost transmission owner from joining the TRANSLink on the grounds of cost shifting.

### **III. Conclusion**

The decisions made in this docket will have a substantial impact on the development of a robustly competitive wholesale electricity market in the Midwest. Although Applicants state that the TRANSLink filing will further the Commission's RTO goals, if approved in its present form the TRANSLink will serve to do just the opposite. As argued *supra*, the TRANSLink filing fails to meet the precedence set by the Commission in both Order 2000 and *Commonwealth Edison*. Instead of embracing the principles set out in Order 2000, the Applicants seek to cement their control over their respective transmission systems via the TRANSLink ITC.

As a result, the ICC respectfully requests that the Commission reject the TRANSLink proposal and, in furtherance of the Commission's goal of developing large RTOs across the United States, direct the Applicants to participate directly in either the MISO or the Alliance RTO. If the Commission does not adopt the ICC's primary recommendation, then as an alternative, the ICC urges the Commission to hold its decision in this proceeding in abeyance until after the Commission has considered the broader Midwest RTO development issues in its Notice of Proposed Rulemaking in Docket No. RM01-12-000 ("RTO NOPR").

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document by first-class mail upon each party on the official service list compiled by the Secretary in these proceedings.

Dated at Springfield, Illinois, this 28th day of November 2001.

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Randy Rismiller  
Manager, Federal Energy Program  
Illinois Commerce Commission